

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of a Decision of the Universal	)	CC Docket No. 02-6
Service Administrator	)	

**PETITION FOR WAIVER AND REQUEST FOR REVIEW**

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August 1, 2016

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Pursuant to sections 1.3 and 54.719 of the Commission’s rules, Frontier Communications Corporation (“Frontier”) hereby petitions for waiver of the Commission’s rule requiring an appeal of a Universal Service Administrative Company (“USAC”) decision within 60 days<sup>1</sup> and requests review of USAC’s decision to completely deny over \$600,000 in funding to the New Haven Public School District (“New Haven”).

This Petition for Waiver and Request for Review is a straightforward procedural issue that the Commission has repeatedly held is not a grounds for denying funding – Frontier submitted a complete set of materials and then received a request for information from USAC. Although Frontier continued corresponding with the requestors from USAC, USAC denied over \$600,000 in funding without directly responding to Frontier’s continued submissions and inquiries. Indeed, USAC denied this funding even though there is no allegation that New Haven or Frontier engaged in any wrongdoing. There is no allegation that Frontier failed to deliver services to New Haven or that Frontier failed to submit all required paperwork under the program, and there is no allegation of any misuse of funds or violation of any core program

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<sup>1</sup> See 47 C.F.R. § 54.720.

requirement. Rather, Frontier and New Haven have been denied \$600,000 in funding for delays in submitting some materials in response to a USAC information request.

The Commission has repeatedly recognized that delay in responding to a USAC request for information is not a grounds for complete denial of funding, and the Commission routinely authorizes parties to correct this type of issue.<sup>2</sup> As the Commission has explained, situations like these “involve[] a processing deadline, not a program rule” and “rigid adherence to such procedures does not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.”<sup>3</sup> Frontier thus requests that the Commission allow it an opportunity to fully respond to USAC’s information request.

## **I. BACKGROUND**

Frontier Communications<sup>4</sup> is proud to serve New Haven<sup>5</sup> as part of the E-Rate program, and in Funding Year 2014, Frontier delivered over \$707,960 worth of services to New Haven and its students.<sup>6</sup> As explained further below, over \$600,000 in E-Rate funding was denied from New Haven and Frontier even though Frontier and New Haven had submitted all forms required by the program and even though Frontier was in continued correspondence with the requestors from USAC who had issued requests for information. Despite no finding of wrongdoing or other program violation, over \$600,000 in funding to New Haven and Frontier was denied.

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<sup>2</sup> See, e.g., *Requests for Review of the Decision of the Universal Service Administrator by Alpaugh Unified School District et al.*, 22 FCC Rcd 6035 (2007) (“*Alpaugh Unified*”).

<sup>3</sup> *Id.* ¶ 5.

<sup>4</sup> In Connecticut, Frontier operates under the subsidiary The Southern New England Telephone Company, SPIN # 143001305.

<sup>5</sup> New Haven Public School District, Billed Entity Number # 122543

<sup>6</sup> Form 471 # 939397; FRN #s 2637300, 2637337, & 2637344.

The relevant information regarding the unpaid SLD Invoices are as follows:

SPIN #	143001305 (The Southern New England Telephone Company)
BEN #	122543 (New Haven Public School District)
471 #	939397
FRN #s	2637300, 2637337, & 2637344
Funding Year	2014
Schools and Libraries Division (“SLD”) Invoice #s	2225753, 2254175, 2209416

- A. *Frontier’s Continued Communication During the Course of USAC’s Request for Information, and Frontier Did Not Receive Responses to Its Continued Communications.*

Frontier submitted all required forms to receive funding for these invoices related to the services it provided. Before receiving funding, however, Frontier received further requests for information from USAC regarding backup material for these three SLD invoices. Although Frontier provided extensive information and was in active correspondence with USAC, Frontier was never directly notified that the funding had been completely rejected.

As shown in the attached correspondence related to the requests for information,<sup>7</sup> Frontier was actively responding to the requestors’ inquiries associated with these invoices, and indeed, Frontier responded by the requested due date with most of the requested forms. In some cases, Frontier sent all of the remaining requested forms shortly after USAC’s requested due date. Frontier also sent follow up inquiries regarding the status of USAC’s requests for information. Frontier, however, never received a direct response to its status inquiries, a direct notification that all funding had been denied, or a direct notification that additional information was required following Frontier’s final responses. Instead, funding was completely denied

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<sup>7</sup> See Letter from Jessica Matushek, Frontier, to USAC (May 20, 2016) (Attachment 1 at pp. 10-18) (“Frontier New Haven Appeal”).

through an Electronic Remittance Statement,<sup>8</sup> and representatives of Frontier did not understand that the requestors would never communicate a formal decision, particularly in response to direct inquiries.<sup>9</sup> Indeed, Frontier communicated with the requestors after the Electronic Remittance Statement was issued, and the requestors never indicated that the funding had been denied.

Without realizing that the requestors would not send a direct email to Frontier regarding the decision as to its funding,<sup>10</sup> Frontier continued to provide information and continued to request further status updates to no avail. Indeed, Frontier communicated with the requestors after the Electronic Remittance Statement was issued, and the USAC requestors never indicated that the funding had been denied. To take just a couple of examples, Frontier sent the USAC requestor the relevant bills associated with SLD Invoice # 2225753 on October 2, 2015<sup>11</sup> – the invoices that were apparently the issue for denying this \$334,473.390 in funding – and the USAC requestor did not write Frontier back to tell Frontier that funding had been denied or to indicate that the requestor would not review the bills at issue. Similarly, Frontier sent the USAC requestor two inquiries regarding SLD Invoice # 2209416 – one on September 3, 2015, and one on October 8, 2015 – and Frontier did not receive a response that more paperwork was needed or that its funding would be or had been denied.<sup>12</sup>

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<sup>8</sup> See Frontier New Haven Appeal (Attachment 1 at pp. 5-9).

<sup>9</sup> See Statement of Jennifer Oleniak.

<sup>10</sup> See *id.*

<sup>11</sup> See Email from Jennifer Oleniak, Frontier, to Kyle Generale, USAC (October 2, 2015) (Attachment 1 at p. 10).

<sup>12</sup> Email from Jennifer Oleniak, Frontier, to Melissa Brown, USAC (Sept. 3, 2016) (Attachment 1 at p. 14); Email from Jennifer Oleniak, Frontier, to Melissa Brown, USAC (Oct. 8, 2016) (Attachment 1 at p. 14). USAC never responded.

The following table is a complete record of Frontier's further correspondence and good faith attempts to submit the necessary documentation with USAC and the lack of direct response from the requestors.<sup>13</sup>

<u>SLD Invoice #</u>	<u>FRN</u>	<u>Discount Amount Requested</u>	<u>Request for Information Due Date</u>	<u>Rejection Comment</u>	<u>Frontier's Further Correspondence and Lack of Response from USAC Requestors</u>
2225753	2637300	\$39,092.59	9/1/2015	Service Receipt not confirmed by applicant	Although Frontier submitted a response to the request for information, it never received a response requesting additional materials or notifying it that its claim would be denied.
2225753	2637344	\$113,434.45	9/1/2015	Service Receipt not confirmed by applicant	Although Frontier submitted a response to the request for information, it never received a response requesting additional materials or notifying it that its claim would be denied.
2225753	2637337	\$334,473.39	9/1/2015	No Bills Received	Although Frontier submitted a response to the request for information, it never received a response requesting additional materials or notifying it that its claim would be denied. Frontier submitted invoices on October 2, 2015. <sup>14</sup> USAC, however, never responded to this correspondence or indicated that funding had been denied.
2254175	2637337	\$103,400.99	10/12/2015	Service Receipt not confirmed by applicant	Frontier submitted the service certification on December 17, 2015. <sup>15</sup> USAC never responded to this correspondence or indicated that funding had been denied.
2209416	2637344	<u>\$11,352.99</u>	7/24/2015	Service Receipt not confirmed by applicant	Frontier submitted the service certification on August 24, 2015. <sup>16</sup> USAC never responded to this correspondence or indicated that funding had been denied. Frontier also sent follow up inquiries on September 3 and October 8. <sup>17</sup> USAC never responded.
		\$601,754.41			

<sup>13</sup> See Statement of Jennifer Oleniak.

<sup>14</sup> See Email from Jennifer Oleniak, Frontier, to Kyle Generale, USAC (October 2, 2015) (Attachment 1 at p. 10).

<sup>15</sup> See Email from Jennifer Oleniak to Michael Ciccone (Dec. 17, 2015) (Attachment 7 at pp. 188-90).

<sup>16</sup> See Email from Jennifer Oleniak to Melissa Brown (Aug. 24, 2015) (Attachment 6 at pp. 184-87).

<sup>17</sup> See Email from Jennifer Oleniak, Frontier, to Melissa Brown, USAC (Sept. 3, 2016) (Attachment 1 at p. 14); Email from Jennifer Oleniak, Frontier, to Melissa Brown, USAC (Oct. 8, 2016) (Attachment 1 at p. 14).

In other words, although Frontier provided all relevant paperwork before receiving a request for information and was in good faith contact with USAC throughout the request for information, including requesting updates regarding the payments, the requestors did not inform Frontier that its funding had been denied or that it had to refile for USAC to review the paperwork. Frontier did not discover that USAC had in fact rejected funding until shortly before May 20, 2016.<sup>18</sup>

*B. Frontier's Appeal and USAC's Decision.*

Frontier filed an appeal explaining these facts on May 20, 2016.<sup>19</sup> Frontier had similar issues with receiving funding for three other Connecticut school districts and filed similar appeals.<sup>20</sup>

On July 7, 2016, Frontier received responses from USAC via mail for two appeals filed the same day as the New Haven appeal.<sup>21</sup> As soon as Frontier personnel realized that it had received two other appeals it filed the same day as the New Haven appeal, Frontier directly contacted USAC, and USAC produced the New Haven correspondence.<sup>22</sup> The correspondence

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<sup>18</sup> See Declaration of Jennifer Oleniak.

<sup>19</sup> See Letter from Jessica Matushek to USAC (May 20, 2016) (Attachment 1 at pp. 2-64).

<sup>20</sup> See Letters from Jessica Matushek to USAC (May 20, 2016) (Attachment 3 at pp. 67-176). Frontier will separately appeal these decisions on a later date because Frontier has additional time to do so.

<sup>21</sup> See Statement of Jessica Matushek; Letters from USAC to Jessica Matushek (July 7, 2016) (Attachment 5 at pp. 178-80).

<sup>22</sup> See Statement of Jessica Matushek; Email from SLD Problem Resolution Mailbox to Jennifer Oleniak, Frontier (July 26, 2016) (Attachment 4 at p. 177).



was not available via any online database, and Frontier never received any online or email notification.

USAC denied Frontier's appeal as to the New Haven funding.<sup>23</sup> The decision did not address the issues of notice or lack of communications raised in Frontier's appeal. Instead, USAC found that it could not address the appeal because it was postmarked more than 60 days after the remittance statement. USAC did not consider the lack of direct notice from its representatives.

Once learning of and processing the USAC rejection on July 26, 2016, Frontier then filed this Petition for Waiver and Request for Review as soon as feasible.

## **II. THE COMMISSION ROUTINELY ALLOWS CARRIERS THE OPPORTUNITY TO RESPOND TO USAC REQUESTS FOR INFORMATION IN CIRCUMSTANCES SUCH AS THOSE HERE.**

It is well-settled that applicants like Frontier and New Haven should have an opportunity to correct any issues with delays in providing some documents in response to a USAC request for information, particularly where, as here, the applicant remains in communications, has provided portions of documentation, and is seeking in good faith to provide all requested documentation.<sup>24</sup> For example, in *Alpaugh Unified School District*, the FCC granted 78 appeals of USAC decisions reducing or denying funding on precisely these grounds – i.e., “that applicants failed to respond to USAC’s requests for information within the USAC-specified time frame.”<sup>25</sup> As the Commission explained, this type of appeal “involve[s] a procedural error, . . .

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<sup>23</sup> See Letter from USAC to Jessica Matushek (May 25, 2016) (Attachment 2 at pp. 65-66).

<sup>24</sup> See *Alpaugh Unified*.

<sup>25</sup> *Id.* ¶ 1.

not a failure to adhere to a core program requirement or a misuse of funds.”<sup>26</sup> Because “any violations that occurred were procedural, not substantive,” the Commission found “that the complete rejection of these applications [wa]s not warranted.”<sup>27</sup> The Commission found that rejecting funding because of a “processing deadline, not a program rule,” unnecessarily deprived schools of funding and does not serve the public interest.”<sup>28</sup>

Indeed, the Commission instructed USAC to continue working with applicants after the targeted deadline and to develop better outreach procedures – the very problems that occurred here. In particular, where, as here, an applicant is working with USAC and is continuously in contact to submit requested paperwork, the FCC explained that “USAC shall continue . . . to work beyond the 15 days with applicants.”<sup>29</sup> Anticipating the very problem that occurred here – stemming from a lack of direct communication – the FCC “direct[ed] USAC to develop outreach procedures designed to better inform applicants of the additional information that may be needed and to provide applicants with a 15-day opportunity to respond to such request.”<sup>30</sup>

The FCC has repeatedly reaffirmed these principles and allowed parties another opportunity to respond to USAC requests for additional information.<sup>31</sup> Virtually every month in the Commission’s streamlined resolution of requests related to actions by USAC, the

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<sup>26</sup> *Id.* ¶ 5.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* ¶ 6 n.14.

<sup>30</sup> *Id.* ¶ 1.

<sup>31</sup> See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Ben Gamla Palm Beach Boynton Beach, Florida et al.*, Order, 29 FCC Rcd 1876 (2014).

Commission grants parties, like Frontier and New Haven here, an opportunity to respond to USAC's requests for information.<sup>32</sup>

Furthermore, the lack of a formal ruling associated with the request and the lack of response to Frontier's further correspondence is especially strange considering that a formal decision and the opportunity for carriers to respond is a hallmark of the Beneficiary and Contributor Audit Program ("BCAP").<sup>33</sup> As USAC explains, after a BCAP audit is completed, an exit conference is held with the auditee to review the results of the audit and the next steps of the process. The auditee is then given an opportunity to provide responses to the audit findings, with USAC management preparing a response to address the conditions and corrective actions. Although Frontier and New Haven are being deprived of hundreds of thousands of dollars here, Frontier and New Haven were not granted any of these formal processes. USAC's failure to provide adequate processes associated with this request for information – particularly related to the requestors' failure to respond to Frontier's correspondence – represents a violation of Frontier's Fourth Amendment due process rights.

### **III. GOOD CAUSE, INCLUDING LACK OF DIRECT RESPONSES FROM REQUESTORS OF INFORMATION, REQUIRES WAIVER OF THE COMMISSION'S 60-DAY FILING DEADLINE.**

Under 47 C.F.R. § 1.3, provisions, including the 60-day USAC appeal deadline under 47 C.F.R. § 54.719, may be "waived for good cause shown." As detailed extensively in the background section above, there is ample good cause for waiver of the 60-day time period here.

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<sup>32</sup> See, e.g., *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, Public Notice, DA 16-600 (May 31, 2016); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, Public Notice, DA 16-472 (Apr. 29, 2016); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, Public Notice, DA 16-334 (Mar. 30, 2016).

<sup>33</sup> See USAC, *Beneficiary and Contributor Audit Program*, <http://www.usac.org/about/about/program-integrity/bcap.aspx>.

In particular, USAC denied E-Rate funding of over \$600,000 to New Haven and Frontier even though Frontier and New Haven had submitted all forms required by the program and even though Frontier was in continued correspondence with the requestors from USAC who had issued requests for information regarding certain follow-up details associated with Frontier's submissions.

As explained above, Frontier was actively responding to the requestors' inquiries associated with these invoices, and indeed, sent most of the requested forms, even if in some cases Frontier was delayed in sending. In all cases, Frontier never heard back from the requestors – either after the initial submission, after sending additional materials, or after sending follow-up inquiries regarding the status of USAC's requests for information.<sup>34</sup> Indeed – Frontier arguably met the 60-day deadline by submitting additional information or by sending emails inquiring as to the status. Frontier's good faith follow up efforts and the lack of direct communication from requestors represent good cause for waiver of the 60-day timeline under 47 C.F.R. § 54.719. As soon as Frontier discovered the issue – which was shortly before its appeal filed on May 20<sup>th</sup>, Frontier filed an appeal to USAC as soon as feasible.

Frontier believes that the Commission only need to find good cause to waive this initial deadline. Doing so would allow Frontier to resolve any outstanding requests for information with USAC. However, Frontier recognizes that it appealed to USAC, and USAC issued a decision more than 60 days before this Petition for Waiver and Request for Review was filed.<sup>35</sup> The Commission need not reach this issue because good cause exists to waive the first filing

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<sup>34</sup> See Statement of Jennifer Oleniak.

<sup>35</sup> This appeal was filed 68 days after the USAC postmarked the rejection of Frontier's appeal (May 25, 2016). Frontier only actually discovered USAC's decision on July 26, 2016, and is filing this appeal as soon as feasible, 6 days later.

deadline, and waiver of that deadline would allow Frontier to resolve the request for information with USAC – again all services were provided and there is no actual allegation of program wrongdoing. If, however, the Commission believes it must waive the 60-day deadline to appeal a USAC decision under 47 C.F.R. § 54.719, good cause exists for doing so. As explained in the attached Declaration of Jessica Matushek, as soon as Frontier personnel realized that they had received two other appeals that Frontier had filed the same day as the New Haven appeal, Frontier directly contacted USAC to inquire whether the New Haven appeal had been issued, and USAC produced the New Haven correspondence.<sup>36</sup> The correspondence was not available via any online database, and Frontier never received any online or email notification.<sup>37</sup> Once learning of and processing the USAC rejection on July 26, 2016, Frontier then filed this Petition for Waiver and Request for Review as soon as feasible – just four business days later. Given that the two other appeals took so much longer to process – at least another month and a half – it is understandable how this New Haven decision went undiscovered or unprocessed and why waiver is merited. Because Frontier only just actually learned of and processed USAC’s decision, because depriving New Haven and Frontier of \$600,000 in E-Rate funding would result in significant harm to New Haven and Frontier, and because there is no actual allegation of program wrongdoing here, good cause exists to allow Frontier to fully respond to USAC’s requests for information.

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<sup>36</sup> See Declaration of Jessica Matushek; Email from SLD Problem Resolution Mailbox to Jennifer Oleniak (July 26, 2016) (Attachment 4 at p. 177).

<sup>37</sup> See Statement of Jessica Matushek.

#### **IV. IN THE ALTERNATIVE, FRONTIER REQUESTS A WAIVER OF THE INVOICING DEADLINE AND AN OPPORTUNITY TO FULLY RESPOND TO THE REQUESTS FOR INFORMATION.**

Finally, in the alternative, Frontier requests a waiver under 47 C.F.R. § 1.3 of the E-Rate submission deadline. Although Frontier already submitted all necessary paperwork as an initial matter (the only issue was a delayed response to a USAC request for information), extension of the E-Rate submission deadline is an alternative remedy that could allow Frontier the opportunity to fully respond to USAC’s request for information and ensure that New Haven and Frontier are not unnecessarily deprived of \$600,000 in critical E-Rate funding.

In its initial appeal to USAC, Frontier requested, “[t]o the extent necessary, . . . an extension of the invoice date so that USAC may cure the deficiencies in the processes associated with these bills and disburse the funding owed.”<sup>38</sup> Frontier specifically cited to the State E-Rate Coordinator’s Petition for Omnibus Waiver of Invoice Deadline Regulation, and asked for an extension for all of the reasons stated therein.<sup>39</sup> Thus, if the Commission does not otherwise grant Frontier a waiver to resolve the issue with the USAC requests for information, Frontier renews its requests for a waiver of the invoicing deadline for the same reasons so many other applicants have faced issues and draconian penalties.

#### **V. CONCLUSION**

For the foregoing reasons, Frontier requests (1) a waiver of the Commission’s rule requiring an appeal of a Universal Service Administrative Company (“USAC”) decision within 60 days;<sup>40</sup> (2) review of USAC’s decision to deny E-Rate funding to Frontier and New Haven;

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<sup>38</sup> See Frontier New Haven Appeal.

<sup>39</sup> See *id.*; State E-Rate Coordinators’ Alliance Petition for Omnibus Waiver of Invoice Deadline, CC Docket No. 02-6 (May 12, 2016).

<sup>40</sup> See 47 C.F.R. § 54.720.

and an opportunity to fully respond to all USAC requests for information so that New Haven and Frontier can receive the funding owed.

Respectfully submitted,

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